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April 15, 2013

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Request for Connect America Fund Cost Models*, FCC Public Notice in WC Dockets 10-90 and 05-337, DA 11-2026 (Wireline Competition Bur., rel. Dec. 15, 2011)

Dear Ms. Dortch:

The Federal Communications Commission provided the Wireline Competition Bureau clear instructions on how to determine and allocate Connect America Fund ("CAF") Phase II support for price cap carriers in insular areas. Specifically, the Bureau must either: (1) adopt a cost model that adequately accounts for the unique costs of serving insular areas; or (2) maintain existing frozen support levels for those insular areas left out of the cost model. What the Bureau may not do—contrary to what ACS and USTelecom ask the Bureau to do in their comments—is reallocate the vast majority of existing, frozen insular support to ACS and Hawaii Telecom ("HT"). As detailed below, this approach is blatantly unlawful and would stifle broadband deployment in several of the most underserved parts of the country.

First, reallocating existing frozen support among carriers would require the Bureau to exceed the scope of its narrow, delegated authority.[1] Second, shifting support to Alaska and Hawaii—areas with much greater broadband penetration than Puerto Rico—would run counter to the FCC's long-standing interest in targeting support to those areas of the country with low broadband penetration levels.[2] Third, asking the Bureau to discard the cost models submitted by PRT and ACS and instead initiate a new proceeding to create a biased distribution methodology that favors ACS and HT threatens to derail the near-term distribution of CAF II money to insular areas.[3] Fourth, stripping frozen support away from PRT is irreconcilable

[1] *See Connect America Fund*, Report and Order, WC Docket No. 10-90, FCC 11-161, ¶ 193 (rel. Nov. 18, 2011) ("*USF/ICC Transformation Order*").

[2] *See High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 4136, ¶ 26 (2010) ("*2010 Insular Order*").

[3] *See* Reply Comments of ACS, WC Docket No. 10-90, at 7 (Mar. 25, 2013) ("ACS Reply Comments").

with earlier arguments raised by USTelecom and others in this proceeding in opposition to mandating the use of legacy high cost support for multiple purposes.[4]

I. THE BUREAU CANNOT REDISTRIBUTE FROZEN SUPPORT AMONG INSULAR AREAS WITHIN THE SCOPE OF ITS DELEGATED AUTHORITY.

In the *USF/ICC Transformation Order*, the Commission instructed the Bureau to consider the "unique" "operating conditions and challenges" of insular areas "when adopting a cost model" and further directed the Bureau to "consider whether the model ultimately adopted adequately accounts for the costs faced by carriers serving these areas."[5] The Commission further determined that "[i]f, after reviewing the evidence, the [Bureau] determines that the model ultimately adopted does not provide *sufficient* support to *any of these areas,* the Bureau may *maintain existing support levels . . . to any affected price cap carrier*, without exceeding the overall budget of $1.8 billion per year for price cap carriers."[6] Put another way, the Commission has provided the Bureau two avenues to allocate CAF II funding to insular areas: (1) adopt a cost model—whether an insular-specific cost model or the CACM—that adequately accounts for the unique costs of deploying broadband in insular areas; or (2) "maintain existing support levels" for insular carriers. The Bureau, however, is not authorized under either avenue to arbitrarily redistribute existing support among insular carriers, as ACS and USTelecom argue.[7]

USTelecom's legal arguments to the contrary lack merit. Indeed, USTelecom simply argues that the Bureau's authority to "*maintain* existing support

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4 *See, e.g.*, Letter from David Cohen, USTelecom, to Marlene Dortch, FCC, WC Docket No. 10-90, at 2 (Jan. 31, 2013); *see also* Letter from Jonathan Banks, USTelecom, to Marlene Dortch, FCC, WC Docket No. 10-90 and CC Docket No. 01-92, at Attachment (Mar. 27, 2013).

5 *USF/ICC Transformation Order*, ¶ 193.

6 *Id.*

7 Reply Comments of USTelecom, WC Docket No. 10-90, at 2 (Mar. 25, 2013) ("USTelecom Reply Comments") ("To properly size the amount of funds available for non-contiguous price cap territories, the Bureau must reasonably determine the cost differentials not presently captured by the CACM and specify the obligations of the potential recipients. Such a calculation should be based on a principled process that upholds the goals of efficiency and integrity of universal service high cost funding adopted in the Order and ensures that funding goes to truly high-cost areas."); ACS Reply Comments at 6 (The Commission must "reduce[] the CAF Phase II support of PRTC and Vitelco in dramatic fashion" if it does not increase the overall level of support flowing to non-contiguous carriers.).

levels" permits the Bureau to "*adjust* existing support levels to individual price cap carriers serving non-contiguous areas…."[8] But the power to "maintain" does not include the greater power to "adjust" support. Maintain means "to keep in an existing state,"[9] whereas "adjust" means "to bring to a more satisfactory state."[10] Here, if the Bureau opts not to use a cost model, it only has the authority to "maintain" (*i.e.*, keep) support for insular carriers at existing levels.[11]

II. UNSERVED PUERTO RICANS OUTNUMBER UNSERVED ALASKANS 14 TO 1 AND OUTNUMBER UNSERVED HAWAIIANS 92 TO 1.

The Commission emphasized in the *National Broadband Plan* that the "CAF should only provide funding in geographic areas where there is no private sector business case to provide broadband and high-quality voice-grade service."[12] To identify areas lacking a private sector business case for broadband deployment, the Commission looks first-and-foremost at broadband penetration rates.[13] ACS agrees with this approach. Specifically, ACS emphasizes that a principal indicator in determining if an area "will not be able to deliver broadband at [its frozen] level of

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8 USTelecom Reply Comments at 2 ("This language permits the Bureau to adjust existing support levels to individual price cap carriers serving non-contiguous areas if the Bureau finds, using a principled methodology and thorough analysis, that the CACM-based support for an individual carrier does not accurately reflect the costs of delivering voice and broadband service in such carrier's service area.").

9 *See* Definition of "Maintain," Merriam Webster, http://www.merriam-webster.com/dictionary/maintain.

10 *See* Definition of "Adjust," Merriam Webster, http://www.merriam-webster.com/dictionary/adjust?show=0&t=1365523482.

11 ACS also fails to legally justify its proposal to reduce support to PRT and VITELCO "in dramatic fashion." ACS Reply Comments at 6.

12 Omnibus Broadband Initiative, Federal Communications Commission, Connecting America: The National Broadband Plan, at 138 (2010) ("National Broadband Plan") ("CAF support levels should be based on what is necessary to induce a private firm to serve an area."). In the *2010 Insular Order*, the Commission emphasized that there is no "private sector business case" in situations where "providers cannot earn enough revenue to cover the costs of deploying and operating broadband infrastructure and services." *2010 Insular Order*, ¶ 44.

13 *See 2010 Insular Order*, ¶ 26 ("The Commission has long measured the success of its universal service policies on the basis of telephone penetration rates.").

support" is whether "broadband availability" for the area "hovers near the bottom … in national surveys."[14]

Here, the *Eighth Broadband Progress Report* clearly shows just how underserved Puerto Rico is compared to the rest of the country. In particular, it reflects that only 140,000 Alaskans, or *19.6%* of the state's total population of 715,000, lack access to fixed broadband that meets the FCC's speed benchmark.[15] Likewise, only 21,000 Hawaiians, or *1.5%* of the state's population of 1.362 million lack access to fixed broadband that meets the FCC's speed benchmark.[16] In stark contrast, 1,922,000 Puerto Ricans, or *51.6%* of the island's total population of 3,725,000, lack access to fixed broadband.[17]

So not only is the raw number of unserved Puerto Ricans nearly *14 times greater* than the number of unserved Alaskans and *92 times greater* than the number of unserved Hawaiians, but the percentage of the total population without access to broadband in Puerto Rico is more than *twice* the percentage of the Alaskan unserved population and more than *thirty four times* the percentage of the unserved Hawaiian population. Such evidence is fatal to the argument that Alaska and Hawaii deserve the lion's share of any insular CAF II support.[18] Indeed, to "meet the Commission's ambitious CAF Phase II broadband deployment goals," PRT—to an even greater extent than ACS—will need additional funding "to make up substantial ground after lagging far behind the other price cap carriers for so many years."[19]

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[14] *See* ACS Reply Comments at 11-12.

[15] *See Eighth Broadband Progress Report*, GN Docket No. 11-121, FCC 12-90, Appendix C (rel. Aug. 21, 2012).

[16] *See id.*

[17] *See id.*

[18] *See* ACS Reply Comments at 11-12.

[19] *See id.* at 6.

III. ACS AND USTELECOM FAIL TO OFFER A CONVINCING RATIONALE TO ABANDON THE PRT AND ACS MODELS AND THEREBY DELAY CAF II DISTRIBUTIONS TO INSULAR AREAS.

In 2011, the Bureau encouraged parties to submit forward-looking cost models that could be used to allocate CAF II support in both non-insular and insular areas.[20] In response, PRT invested a significant amount of resources to develop a model that accurately accounts for the challenges of deploying broadband in Puerto Rico, but also puts a premium on cost efficiency. Recognizing that certain insular carriers might not develop their own cost models, PRT's model also enables other insular carriers to generate their own forward-looking costs after entering their unique inputs. ACS also submitted a cost model, and has recently announced its plans to provide a revised model "in the coming weeks."[21] Likewise, VITELCO recently stated that it was developing a cost model that it intended to "submit[] shortly."[22]

These cost models provide the Bureau with more than enough verifiable data to craft an equitable, insular-specific cost model in the near term. ACS and USTelecom, however, are now asking the Bureau to disregard the existing cost models and return to the drawing board to jury-rig a mechanism to reallocate most of the existing and future insular support to ACS and HT. This approach will undoubtedly make it impossible to distribute CAF II money to insular areas anytime soon, and should be rejected on this ground alone. At this late-stage in the proceeding, the Bureau should embrace the granular PRT and ACS models, not throw them away.

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[20] The Bureau specifically sought models that would "be capable of estimating the forward-looking economic costs of an efficient wireline provider at a granular level—census block or smaller—in all areas of the country, including Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and Northern Marianas Islands." *Request for Connect America Fund Cost Models*, WC Docket Nos. 10-90 and 05-337, Public Notice, 26 FCC Rcd 16836, ¶ 6 (Wireline Comp. Bur. 2011).

[21] ACS Reply Comments at 7 ("Since it submitted its February 2012 model of Alaska-specific intrastate and undersea cable transport costs that are not captured in the CACM, ACS has worked diligently to complete its analysis of other model inputs that do not reflect elevated costs of delivering service in Alaska. ACS expects to be in a position to submit an augmented version of its model to capture these additional costs in the coming weeks.").

[22] VITELCO recently stated that it was developing a cost model to be "submitted shortly." *See* Reply Comments of VITELCO, WC Docket No. 10-90, at 5 (Mar. 25, 2013).

Further, ACS's justification for its change of heart is unconvincing. Specifically, ACS argues that the Bureau should discard the cost models submitted by PRT and ACS because HT opted not to submit its own model.[23] PRT strongly disagrees. The Bureau should not reward HT for failing to invest the resources necessary to participate in this proceeding in a meaningful manner.

IV. USTELECOM'S ARGUMENTS ARE INCONSISTENT WITH ITS POSITION THAT CARRIERS STILL REQUIRE IAS AND ICLS TO PROVIDE VOICE SERVICES AT REASONABLE RATES.

USTelecom has repeatedly "urged the Bureau to clarify that frozen IAS and frozen ICLS … should be used for the purpose for which they were designed: to compensate carriers for required reductions in interstate access charges and mandated limits on end users charges."[24] Put another way, USTelecom opposed having its members spend their frozen high-cost support amounts associated with IAS and ICLS twice: first toward the common line costs that ILECs historically recovered through ICLS and IAS, and then a second time for broadband deployment. Understandably, USTelecom was concerned that its members could not use the same frozen support to serve dual purposes.

However, USTelecom appears to take a different view for carriers in Puerto Rico and the Virgin Islands. Specifically, in its reply comments, USTelecom embraces having the Bureau reallocate much-needed IAS/ICLS support from PRT and VITELCO to ACS and HT for purposes of broadband deployment in Alaska and Hawaii. USTelecom cannot have it both ways. Thus, consistent with USTelecom's prior advocacy, the Commission should reject the multi-purposing of frozen support.

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[23] ACS Reply Comments at 7 ("ACS has pursued that effort for over one year now and, while significant progress has been made in gathering the necessary data for ACS's service territory, no such data has yet been compiled for the service areas of HT or the other non-CONUS carriers.").

[24] Letter from David Cohen, USTelecom, to Marlene Dortch, FCC, WC Docket No. 10-90, at 2 (Jan. 31, 2013); *see also* Letter from Jonathan Banks, USTelecom, to Marlene Dortch, FCC, WC Docket No. 10-90 and CC Docket No. 01-92, at Attachment (Mar. 27, 2013). Other entities agree with USTelecom's underlying point. Fairpoint, for example, has been a leader in emphasizing that it "is neither necessary nor appropriate that frozen ICLS, IAS, and LSS be repurposed for broadband expansion during this transition to CAF Phase II." Reply Comments of Fairpoint Communications Inc., WC Docket No. 10-90, at 2 (April 2, 2013). Indeed, as Fairpoint explains, "keeping rates for existing services affordable is an important FCC policy accomplished with frozen support." *Id.*

Please let me know if you have any questions.

Respectfully submitted,

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